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2
3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF WASHINGTON
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6 JAMES V. KELLY; CRESCENT BAR
7 CONDOMINIUM MASTER ASSOC., et al.,

NO. CV-11-023-JLQ

8 Plaintiffs,

9 HARLEY D. O'NEIL, JR., AND MICHELE
10 D. O'NEIL; AND ESTATE OF ELAINE
11 O'NEIL,

**ORDER DENYING MOTION FOR
ORDER OF SUBSTITUTION**

12 Intervenor Plaintiffs,

13 vs.

14 PUBLIC UTILITY DISTRICT NO. 2., et al.,
15

16 Defendants.

17 BEFORE THE COURT is the Estate of Elaine O'Neil's Motion for Order
18 Substituting Intervenor Plaintiffs Harley D. O'Neil, Jr. and Michele D. O'Neil (ECF No.
19 458) as real parties in interest as to all claims associated with North Park Lot 134.

20 **I. BACKGROUND**

21 On April 25th, 2013, Harley and Michele O'Neil (the O'Neils), and the Estate of
22 Elaine O'Neil (the Estate) moved to intervene in this litigation based upon the
23 contention that the O'Neils and the Estate were members of the Plaintiff Crescent Bar
24 Recreational Vehicle Home Owners' Association and "lease and occupy real property on
25 Crescent Bar Island" in the part commonly known as "North Park." (ECF No. 425).
26 The court granted the intervention and the Intervenor Complaint alleges that the
27 individual O'Neils lease and occupy Lot 127 and that the Estate owns a leasehold interest
28

1 in Lot 134 as well as recreational home and improvements on the lot. (ECF No. 446 at
2 2).

3 After filing the Intervenor Complaint, the attorney for all three parties, Robert G.
4 Dodge, moved to withdraw and to allow the Intervenor Plaintiffs to appear pro se. The
5 court granted the motion except as to the Estate, which the court concluded could not
6 appear pro se under LR 83.6. (ECF No. 455).

7 In the Motion now before the court, the Estate has filed:

8 1. A certified copy of an instrument entitled "Quit Claim Deed" of Harley D.
9 O'Neil, Jr., as the Personal Representative of the Estate of Elaine O'Neil, purporting to
10 "convey[] and quit claim" "the following described real estate...together with all after
11 acquired *title* of the grantor...": "Lot 134...together with that certain 1982 Alfa travel
12 trailer...located on said premises" to himself, Harley D. O'Neil Jr. "as his separate estate";
13 and

14 2. A certified copy of a "Quit Claim Deed" of Harley D. O'Neil, Jr. purporting to
15 convey the real estate "together with all after acquired title" in Lot 134 along with the
16 travel trailer to the marital property of Harley D. and Michele D. O'Neil.

17 Both Quit Claim Deeds were signed on April 23, 2013, two days *prior* to the filing
18 of the Motion to Intervene, although they were not recorded in Grant County until May
19 2, 2013.

20 Based upon these Quit Claim Deeds, the Estate's Motion seeks the substitution of
21 Michele D. and Harley D. O'Neil as the "as the real parties in interest as to all claims
22 associated with North Park Lot 134," the dismissal of the Estate as a party, and
23 termination of Robert Dodge as attorney of record for any party in the case. (ECF No.
24 458).

25 **II. DISCUSSION**

26 Although the Estate's Motion does not specify a procedural rule, Federal Rule of
27 Civil Procedure 17(a) provides that "[a]n action must be prosecuted in the name of the
28 real party in interest." The rule allows the real party in interest to be substituted.

1 Fed.R.Civ.P. 17(a)(3). After suit is brought, Rule 25(c) becomes the relevant provision,
2 which Rule provides: "If an interest is transferred the action may be continued by or
3 against the original party unless the court on motion, orders the transferee to be
4 substituted in the action or joined with the original party." The decision to substitute
5 parties is left to the discretion of the court and is generally liberally allowed when an
6 honest mistake has been made or the change is merely to correct a misnomer.

7 The change proposed by the Estate is not a mere correction of a misnomer. The
8 Estate's Motion purports to claim that its interest in this lawsuit was transferred just prior
9 to the filing of the Intervenor Complaint. However, the record does not evidence that
10 such a transfer/ assignment has allegedly occurred. The Estate bases its claims in the
11 Intervenor Complaint upon an alleged *leasehold* interest in Lot 134. (ECF No. 448 at 1,
12 ¶ B). The Quit Claim Deeds purports to convey *title* in Lot 134 and does not mention a
13 leasehold interest. Even assuming the Quit Claim Deeds effectively transferred the
14 Estate's interest in Lot 134 and title to the trailer, it remains unclear who owns the *causes*
15 *of action* pursued in the Intervenor Complaint. There has been no discussion of or
16 declaration as to whether the claims were ever assigned by the decedent or her Estate;
17 nor is there any discussion of the possibly relevant questions of when any of the Estate's
18 claims accrued and if they accrued prior to death, whether they succeed the decedent's
19 death.

20 Without further development of the record, the court has no basis to conclude the
21 Estate's *causes of action* pursued in the Intervenor Complaint have been transferred to
22 Michele and Harley O'Neil. Accordingly, the Estate of Elaine O'Neil's Motion for Order
23 of Substitution (ECF No. 458) is **DENIED**, with leave to renew.

24 The Clerk is hereby directed to enter this Order and furnish copies of this Order to
25 counsel and the *pro se* Intervenor Plaintiffs.

26 DATED this 17th day of October, 2013.

27 s/ Justin L. Quackenbush
28 JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE